

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

CORNELIA CALAYAG,

Plaintiff,

CIV S-05-0086 LKK PAN PS

v.

ORDER

JOHN E. POTTER, POSTMASTER
GENERAL, UNITED STATES POSTAL
SERVICE,

Defendant.

—oOo—

On January 14, 2005, plaintiff filed this action alleging employment discrimination under Title VII of the Civil Rights Act, 42 U.S.C. 2000e et seq., following the October 26, 2004, decision of the Equal Employment Opportunity Commission affirming dismissal of plaintiff's administrative complaint for failure to state a claim. Plaintiff's complaint was filed in this court within the 90-day limitation period provided by 42 U.S.C. § 2000e-5.

1 On June 10, 2005, plaintiff filed a request for default
2 judgment against Postmaster General John E. Potter on the ground
3 he has failed to answer plaintiff's complaint.

4 Plaintiff's papers demonstrate service of process has not
5 properly been made upon defendant as required by Fed. R. Civ. P.
6 4(i)(2)(A). Plaintiff has filed only proof of service of the
7 complaint upon Mr. Potter.

8 Fed. R. Civ. P. (i)(2)(A) provides: "Service on an
9 agency or corporation of the United States, or an officer or
10 employee of the United States sued only in an official capacity,
11 is effected by serving the United States in the manner prescribed
12 by Rule 4(i)(1)¹ and by also sending a copy of the summons and
13 complaint by registered or certified mail to the officer,
14 employee, agency, or corporation."

15 The Ninth Circuit has encouraged district courts to be
16 "generally more solicitous of the rights of pro se litigants,"

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18 ¹ Fed. R. Civ. P. 4(i)(1) provides:

19 (1) Service upon the United States shall be effected
20 (A) by delivering a copy of the summons and of the complaint to
21 the United States attorney for the district in which the action is
22 brought or to an assistant United States attorney or clerical
23 employee designated by the United States attorney in a writing
24 filed with the clerk of the court or by sending a copy of the
25 summons and of the complaint by registered or certified mail
26 addressed to the civil process clerk at the office of the United
States attorney and
(B) by also sending a copy of the summons and of the complaint by
registered or certified mail to the Attorney General of the United
States at Washington, District of Columbia, and
(C) in any action attacking the validity of an order of an officer
or agency of the United States not made a party, by also sending a
copy of the summons and of the complaint by registered or
certified mail to the officer or agency.

1 particularly when technical jurisdictional requirements are
2 involved." Borzeka v. Heckler, 739 F.2d 444, 448, n.2 (9th Cir.
3 1985). Lenience notwithstanding, substantial compliance with
4 Rule 4 is required, even for pro se plaintiffs. See Bramesco v.
5 Drug Computer Consultants, 148 F.R.D. 690 (S.D.N.Y. 1993).
6 Moreover, that defendants have actual notice of an action, absent
7 special circumstances, is insufficient to confer personal
8 jurisdiction in the absence of valid service of process. See
9 Fed. R. Civ. P. 4; Mid-Continent Wood Prod., Inc. v. Harris, 936
10 F.2d 297 (7th Cir. 1991); Jackson v. Hayakawa, 682 F.2d 1344 (9th
11 Cir. 1982).

12 To comply with Rule 4(i)(2)(A) plaintiff is directed to
13 send by certified or registered mail a copy of the summons *and*
14 complaint to each of the following:

15 John E. Potter
16 Postmaster General
17 U.S. Postal Service
475 L'Enfant Plaza, SW
Washington, D.C. 20260-0010

18 McGregor W. Scott
19 United States Attorney
20 Eastern District of California
c/o Civil Process Clerk
501 I Street, Suite 10-100
Sacramento, CA 95814-2322

21 Alberto Gonzalez
22 Attorney General
23 U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

24
25 Plaintiff is directed to file proof of such service
26 within 11 days. Failure to comply will result in a

1 recommendation this case be dismissed pursuant to Fed. R. Civ. P.
2 4(m) and Fed. R. Civ. P. 41(b). Plaintiff's request for default
3 judgment is denied.

4 So ordered.

5 Dated: July 6, 2005.

6 /s/ Peter A. Nowinski

7 PETER A. NOWINSKI

8 Magistrate Judge
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